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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,447	04/09/2004	Robert Edwin Schneider	45568-00451	1347
7590	10/17/2005			EXAMINER
Travis C. Stephenson, Esq. MARSH FISCHMANN & BREYFOGLE LLP Suite 411 3151 South Vaughn Way Aurora, CO 80014			GILBERT, SAMUEL G	
			ART UNIT	PAPER NUMBER
			3735	
DATE MAILED: 10/17/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/821,447	SCHNEIDER ET AL.
	Examiner	Art Unit
	Samuel G. Gilbert	3736 3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-4,6-8,11,12,15-19,22-32 and 34 is/are rejected.
- 7) Claim(s) 5,9,10,13,14,20,21 and 33 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15-19, 22-32 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Metzler et al(5,702,342).

Claims 15, 16, – element –12- is attached to the skull, elements –54-, -48-, -62- and –65- are rotatable with the center of rotation being inside primary casing –12-.

Claim 17 – the axis of actuator –65- is aligned with a desired interface.

Claim 18 – the housing is securable as claimed.

Claim 19 – the transducer housing is secured in a detachable manner.

Claim 22 – element –12- is attached to the skull, elements –54-, -48-, -62-and –65- are rotatable with the center of rotation being inside primary casing –12-, and element –41- is a retention apparatus.

Claim 23 - the housing is securable as claimed.

Claim 24 – mounting apparatus –12- contains at least a portion of the rotatable portion –48-.

Claim 25 – the rotational portion is capable of rotation as claimed.

Claim 26 – mounting post –48- is rounded.

Claim 27 – the retention member –41- is selectively moveable along the internal threads of element –12-.

Claim 28 – the mounting apparatus and locking elements –12-, -48- and –54- will provide a limited amount of retention force/friction. It is the examiner's position that there would inherently be a predetermined amount of force required to rotate post –48- when the apparatus is in a locked position.

Claim 29 – element –24- is a retaining member, element –54- is a resilient member, and tongue –30- is a guide.

Claim 30 - element –54- allows angular orientation, the length of post –48- allows vertical orientation and actuator –65- is interfaced with an auditory component.

Claim 31 – at least a portion of the rotatable part of the housing –48- is within element –12-.

Claim 32 – retention element –41- is used to secure the rotatable portion.

Claim 34 – the actuator is connected to the transducer housing.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 6, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Metzler et al (5,702,342) in view of Ball (5,456,654).

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Claim 1 – Metzler et al teaches an actuator –65-, a driver, transducer –62- and a transducer housing –48- and –62- having a rotatable portion. Elements, -48-, -62-, and –65- are rotatable at least about the longitudinal axis of mounting post –48- while having a fixed center of rotation. However, Metzler et al does not set forth the type of transducer used and therefore does not include a magnet and a coil driver. Transducers formed from a magnet and a coil driver are old and well known in the hearing aid arts as shown by Ball. In the absence of showing any criticality in the exact type of transducer used the selection of any known transducers would have been an ordinary design expedient to a practitioner in the medical arts. Therefore, it would have been obvious to one of ordinary skill in the medical arts at the time the invention was made to use a magnet and coil driver transducer for the transducer set forth in Metzler et al as an ordinary design expedient.

Claim 2 – the mounting post is rotatable within a cavity in housing –12-.

Claim 6 – the mounting post –48- is rounded.

Claim 7 – the mounting post is connectable to the mounting apparatus –12- at a continuum of angular orientations.

Claims 3, 4, 8, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Metzler et al (5,702,342) in view of Ball (5,456,654) as applied to claims 1 and 2 above, and further in view of Kasic, II et al (6,491,622).

Claims 3 and 8 - the combination of Metzler et al (5,702,342) in view of Ball (5,456,654) teach an apparatus as claimed but does not show the particular details in

how the actuator interacts with the transducer, such as through an aperture. Kasic discloses an actuator operable through an aperture as shown in Figure 4. In the absence of showing any criticality in the exact type of actuator interface used the selection of any known interface would have been an ordinary design expedient to a practitioner in the medical arts. Therefore, it would have been obvious to one of ordinary skill in the medical arts at the time the invention was made to use the particular interface, including an aperture for the interface as set forth in Metzler as an ordinary design expedient.

Claim 4 – the device is capable of rotation as claimed.

Claims 11 and 12 – Ball teaches hermetically sealing the transducer housing. It is the examiner's position that both claims 11 and 12 read on the apparatus of Ball as set forth in the above combination.

Allowable Subject Matter

Claims 5, 9, 10, 13, 14, 20, 21 and 33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patents 4,498,461 and 5,263,956 teach related structural elements.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G. Gilbert whose telephone number is 571-272-4725. The examiner can normally be reached on Monday-Friday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eleni Mantis-Mercader can be reached on 571-272-4740. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Samuel G. Gilbert
Primary Examiner
Art Unit 3736 3736

sgg